

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

---

No. 01-1972

---

United States of America,

Appellee,

v.

Gary Dewitt Miller, also known as 'G',

Appellant.

\*

\*

\*

\*

\*

\*

\*

\*

\*

Appeal from the United States  
District Court for the  
District of Minnesota.

**[UNPUBLISHED]**

---

Submitted: April 2, 2002

Filed: April 4, 2002

---

Before McMILLIAN, FAGG, and LOKEN, Circuit Judges.

---

PER CURIAM.

Gary Dewitt Miller pleaded guilty to conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846. The district court<sup>1</sup> found Miller ineligible for safety-valve relief under U.S.S.G. § 5C1.2 and sentenced him to 60 months in prison, the statutory minimum, and 4 years supervised release. On appeal, counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and has filed a brief

---

<sup>1</sup>The HONORABLE JAMES M. ROSENBAUM, Chief Judge, United States District Court for the District of Minnesota.

raising the issue whether the district court erred in denying safety-valve relief. After careful review of the record, we affirm.

The district court did not err because Miller's Category II criminal history made him ineligible for safety-valve relief. See U.S.S.G. § 5C1.2. Even if the district court had granted Miller a downward departure under U.S.S.G. § 4A1.3 to a Category I criminal history, as Miller had requested, he still would not have qualified for the safety-valve reduction. See United States v. Langmade, 236 F.3d 931, 931-32 (8th Cir. 2001) (per curiam); Webb, 218 F.3d at 881.

Accordingly, we affirm and grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.